APPENDIX A

IN THE

United States Court of Appeals

FOR THE ELEVENTH CIRCUIT

No. 81-7893
Non-Argument Calendar

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

ROBERT A. SNOWDEN, JR.,
SAMUEL SYLVESTER SNOWDEN,
STEPHEN JAMES ISRAEL,
DOUGLAS F. TEMPLES,
HAROLD DEAN JACKSON
LYNN H. JOHNSON,
Defendants-Appellants.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA

(September 21, 1982)

Before GODBOLD, Chief Judge, FAY and CLARK, Circuit Judges.

PER CURIAM:

Robert Snowden, Jr., Samuel Sylvester Snowden, Stephen Israel, Douglas Temples, Harold Jackson, and Lynn Harrison Johnson appeal the denial of a motion to

bar reprosecution after their motion for a mistrial had been granted. We conclude that their motion was properly denied.

Appellants state the issue in this case to be as follows: The double jeopardy clause of the fifth amendment would be violated by a retrial of appellants after the trial ended in a mistrial granted at their request due to the gross negligence of the government. As a factual basis of their argument, appellants assert that the prosecutor was ill-prepared to try the case; that he had to call the prosecutor who began the case to determine what her position had been on several matters; that he mentioned "cocaine" in his opening statement when only crimes associated with marijuana were charged; that an airplane involved in another case was mentioned by a witness to the prejudice of defendants; and that Case Agent Landrum improperly answered a question by disclosing the prior indictment and trial date in the case.

Appellants correctly set out the standard controlling this case as stated in *United States v. Dinitz*, 424 U.S. 600, 96 S.Ct. 1075, 47 L.Ed.2d 267 (1976), as follows:

> The Double Jeopardy Clause does protect a defendant against governmental actions intended to provoke mistrial requests and thereby to subject defendants to the substantial burdens imposed by multiple prosecutions. It bars retrials where "bad-faith conduct by judge or prosecutor," [cite omitted], threatens the "[h]arassment of an accused by successive prosecutions or declaration of a mistrial so as to afford the prosecution a more favorable opportunity to convict" the defendant.

Id. 424 U.S. at 611, 96 S.Ct. at 1081.

We conclude that the district court was correct in denying defendants' motion to dismiss on the basis of

double jeopardy. First, we do not find that the actions by the prosecution constituted gross negligence. Even if we were to agree with appellants that gross negligence existed, we find no conduct of the prosecutor that amounted to bad faith. Nor do we see any intent on the part of the government to provoke a declaration of a mistrial so as to afford the prosecution a more favorable opportunity to convict the defendants. Finding no error, we

AFFIRM.